

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. R2-2006-0058

WASTE DISCHARGE REQUIREMENTS FOR:

**THE OLSON COMPANY
MARINER WALK PROJECT
PITTSBURG, CONTRA COSTA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region, hereinafter Water Board, finds that:

1. The Olson Company, (hereinafter the Discharger) proposes to construct a residential community and public park (hereinafter the Project) on a 15.6-acre parcel in the City of Pittsburg (City) in Contra Costa County.
2. The Project is the a result of a partnership between the Pittsburg Redevelopment Agency and the Discharger to redevelop an existing vacant lot that is owned by the City, and relocate an existing public park (Marina Park) within the development. The lot is located within a residential area approximately 0.45 mile south of the Sacramento River and 0.38 mile from the City's marina area, which is located on the New York Slough. The Project will include the following elements:
 - a. Approximately 123 detached, single-family residential units on about 11.5 acres;
 - b. Relocation of an existing public park within the development on 3.8 acres;
 - c. Associated roads, utilities, and other infrastructure, including a new road that will connect Herb White Way and West 4th Street;
 - d. Construction of a basin to provide treatment for stormwater runoff; and,
 - e. Creation of mitigation wetlands, and preservation of these wetlands under a conservation easement.
3. The site has historically been used for the disposal of fill material and dumping, and a baseball field and playground in the northern part of the site are part of the existing Marina Park that is to be relocated as part of the Project. The properties surrounding the site are predominantly developed with both residential and industrial land uses. The northern and eastern boundaries of the site are adjacent to West 4th Street and a residential area, and Herb White Way, respectively. Undeveloped grassland and a commercial building are located to the northeast and northwest of the site, and the southern boundary is adjacent to a narrow undeveloped strip of land owned by the Sacramento Railway. The western boundary of the site is adjacent to property owned by Mirant power plant, and sanitary sewer facilities are located adjacent to the southwestern portion of the site.

4. There are approximately 0.8 acres of seasonal wetlands on the Project site that are waters of the State. The United States Army Corps of Engineers (Corps) determined, on July 22, 2005, that the wetlands on the site are not waters of the United States pursuant to the U.S. Supreme Court decision in Solid Waste Agency of Northern Cook County (SWANCC) v. Corps. These three contiguous wetlands are located in the southwesterly portion of the site. For approximately ten years, starting in 1987, this area was used as a sediment basin for silt removed from the Pittsburg Marina. Historical aerial photographs from 1952 through 1959 show the southern and central part of the site as a depression and a swale that drained toward the west and northwest.
5. Implementation of the Project will result in the grading of the site to create building pads for the residential units, for re-routing of a 27-inch sanitary sewer trunk line, for construction of roads, stormwater treatment and detention facilities, utilities and other infrastructure, and relocation of the park. This activity will permanently fill and/or disturb the 0.8 acres of seasonal wetlands on the site.
6. **Mitigation Plan:** To mitigate for its permanent fill of 0.8 acres of seasonal wetlands, the Discharger will complete the mitigation proposed in its "Mariner Walk Wetland Mitigation Program (hereinafter WMP), prepared by Zentner and Zentner, dated February 21, 2006, as modified by additional submittals dated May 12, 2006, and June 14, 2006. A Final WMP, including all modifications made in correspondence and in Provisions of this Order, will be completed and submitted to the Water Board for future ease of reference.

Off-site seasonal wetland creation: The Discharger has proposed wetland creation on privately owned and actively grazed ranchland (Gunn Ranch) located to the west of Shiloh Road near the intersection of Little Honker Bay Road in an unincorporated area of Solano County east of Little Honker Bay. This area is about 1,600 feet from the tidal wetlands along the edge of Montezuma Slough. The site drains through local creeks to Montezuma Slough, which drains to Suisun Bay. Gunn Ranch is approximately 10.5 miles from the Project site.

The proposed wetland mitigation consists of the off-site creation of 2.4 acres of compensatory seasonal wetlands, and the preservation of a total of 4.8 acres of land, including the upland areas surrounding the created wetlands. The mitigation wetlands will be created by excavating depressions in upland areas to allow ponding of direct rainfall and collection of runoff from the small watershed associated with each wetland. These excavated pond areas will be seeded and planted with native vegetation, and the preserved area will be fenced to control livestock grazing. Grazing will only be allowed within the wetlands for a limited duration during the dry season to maintain and protect wetland vegetation and reduce fuel loads. The WMP includes a Long-Term Management Plan, and provides for the placement of a conservation easement over the mitigation wetlands and the adjacent uplands.

While the proposed mitigation is to a large degree in-kind, it is located off-site, and well outside the boundaries of the local watershed for the Project. Pursuant to the California Wetlands Conservation Policy and the Basin Plan, the Board shall generally require additional mitigation when the mitigation is implemented off-site. The mitigation ratio that

will result from implementation of this Project and its associated mitigation is 3:1, which is higher than mitigation ratios generally required when on-site mitigation is proposed.

The implementation of the WMP is anticipated to start in the fall of 2006. In the event that monitoring of the mitigation wetlands indicates that mitigation goals at the Gunn Ranch may not be achieved on or before September 15, 2010, then the Discharger shall submit a proposal for providing an alternate plan to mitigate for Project impacts. This plan shall provide for compensation for the permanent loss of 0.8-acre of seasonal wetlands, and in addition, the temporal losses that would be associated with the time delay between wetland impacts and successful implementation of mitigation for those impacts.

7. **Wetland Tracker System:** It has been determined through regional, state, and national studies that tracking of mitigation/restoration projects must be improved to better assess the performance of these projects, following monitoring periods that last several years. In addition, to effectively carry out the State's No Net Loss Policy for wetlands, the State needs to closely track both wetland losses and mitigation/restoration project success. Therefore, we require that the Discharger use a standard form to provide Project information related to impacts and mitigation/restoration measures. An electronic copy of the form and instructions can be downloaded at: <http://www.waterboards.ca.gov/sanfranciscobay/certs.htm>. Project information concerning impacts and mitigation/restoration will be made available at the web link: <http://www.wetlandtracker.org>
8. **Post Construction Stormwater Management:** Discharge of stormwater from the developed site will impact beneficial uses through the discharge of urban runoff pollutants such as oil, grease, heavy metals, herbicides, pesticides, etc. To address the Project's post-construction impacts to beneficial uses, the Discharger has proposed to install a water quality basin to provide treatment for runoff from the site before it discharges to the local storm drain system and Willow Creek. The Discharger has submitted a "Mariner Walk Post-Construction Stormwater Treatment Plan" (hereinafter SWMP), prepared by Zentner and Zentner. Additional information regarding post-construction stormwater management was submitted on May 12, 2006, and June 27, 2006. This plan is acceptable to the Board, with revisions described in the Provisions of this Order. The plan includes the following measures to address the Project's post-construction urban runoff impacts:
 - a. Construction of a water quality basin that will capture and treat at least 85% of the average annual stormwater runoff from the development area of approximately 11.52 acres. The target minimum detention time for the water quality basin shall be 48 hours;
 - b. Implementation of the site design measures, source control measures, and treatment controls for the Project, as specified in the SWMP and in the Provisions; and,
 - c. Appropriate management plans, deed restrictions and a funding mechanism for the operation and maintenance of the stormwater system and other BMPs for their lifetime.
9. **Conservation Easement for Mitigation Land:** The wetland mitigation areas, including the buffer zones, shall be subject to a conservation easement pursuant to Civil Code Sections 815-816. The easement shall provide in perpetuity for the protection of the mitigation area

for the purposes of retaining the land in its natural, open-space condition that supports seasonal wetlands. Uses allowed within this area shall be consistent with those purposes as well as maintaining existing habitat resources. Livestock grazing will be restricted to the levels necessary for fuel management consistent with the Grazing Management Plan for the mitigation area. The Discharger shall submit the conservation easement for the review and approval of the Executive Officer prior to groundbreaking at the Project site.

10. **Long-Term Management:** The Final WMP will include a Long Term Management Plan that specifies how the mitigation lands are to be managed and preserved under the conservation easement. The Discharger has provided an estimate of the endowment amount necessary for the appropriate management of the mitigation area in perpetuity. This Order requires the Discharger to create an endowment account that shall fund the conservation easement holder's long-term costs to implement the grazing management, fuel management, invasive weed control, fence and sign maintenance, and property management costs described in the Long-Term Management Plan.
11. **Mitigation Plan Financing:** The Discharger has not submitted an estimate of the cost of implementation of the WMP for the Project. This Order requires the Discharger to submit, prior to the start of Project construction, a cost estimate for the mitigation construction, monitoring and maintenance over a five-year period. Prior to the start of construction, a bond or letter of credit in the amount of the cost estimate shall be established by the Discharger.
12. **Hydromodification:** Project implementation will result in an increase of about seven acres of impervious surface. As a result, in comparison with the pre-Project conditions, stormwater runoff will be discharged from the Project site at greater volumes and over a shorter period of time following storm events. Therefore, an analysis was conducted to determine if the operation of the Project could increase the potential for erosion impacts downstream of the Project site. The Discharger has submitted information regarding the stormwater collection and transport system downstream of the Project. The discharge from the site will be carried to the Suisun Bay via existing hardened storm drain facilities that are not subject to erosion from increased flows to the point of discharge to an earth channel slough with a relatively flat grade, which serves as an impoundment in large flow events. Other stormwater from the City of Pittsburg storm drain system collects in this slough, and is discharged directly to the Suisun Bay by a pumped discharge. As a result of the size and length of the slough, significant storage during non-pumping periods is provided. Based on this drainage configuration, staff has concluded that the increase in discharge that will result from Project implementation is not expected to cause hydromodification impacts downstream of the Project site. Based on a review of the submitted information, additional mitigation to address potential hydromodification impacts is not required in this Order.
13. On July 8, 2005, the Discharger submitted an initial Report of Waste Discharge for the Project. The Report of Waste Discharge was subsequently completed by additional submittals.

14. The Water Board has determined to regulate the proposed discharge of fill materials into waters of the State by issuance of Waste Discharge Requirements (WDRs) pursuant to Section 13263 of the California Water Code (CWC) and Title 23, California Code of Regulations (CCR), Sections 2205-2233, and 3857. Due to the Corps' determination that the wetlands on site are not waters of the United States, they are not subject to regulation under Section 404 or 401 of the Clean Water Act. Therefore, the Water Board considers WDRs necessary to adequately address impacts to beneficial uses of waters of the State from this project, and mitigation to meet the objectives of the California Wetlands Conservation Policy (Executive Order W-59-93), and to accommodate and require appropriate changes over the life of the project and its construction.
15. The Water Board, on June 21, 1995, adopted, in accordance with CWC Section 13244 et seq., a revised Water Quality Control Plan, San Francisco Bay Basin (Basin Plan). This updated and consolidated revised Basin Plan was approved by the State Water Resources Control Board and the Office of Administrative Law on July 20, 1995, and November 13, 1995, respectively. A summary of regulatory provisions is contained in 23 CCR Section 3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwaters. This Order is in compliance with the Basin Plan.
16. The wetlands on the Project site are located in the Suisun Basin, and are in the Willow Creek watershed that drains to Suisun Bay. The Basin Plan does not explicitly designate beneficial uses for waters on the Project site. Stormwater runoff from the project site will discharge to an unnamed slough that is tributary to Willow Creek and Suisun Bay. The Basin Plan states that "[t]he beneficial uses of any specifically identified water body generally apply to all of its tributaries." The following existing beneficial uses defined in the Basin Plan for Suisun Bay are:
 - Agricultural supply
 - Ocean, Commercial and Sport Fishing
 - Estuarine Habitat
 - Industrial Service Supply
 - Fish migration
 - Navigation
 - Preservation of Rare and Endangered Species
 - Water contact recreation
 - Non-contact water recreation
 - Fish spawning
 - Wildlife habitat
17. The Basin Plan Wetland Fill Policy (Policy) establishes that there is to be no net loss of wetland acreage and no net loss of wetland value, when the project and any proposed mitigation are evaluated together, and that mitigation for wetland fill projects is to be located in the same area of the Region, whenever possible, as the project. The Policy further establishes that wetland disturbance should be avoided whenever possible, and if not

possible, should be minimized, and only after avoidance and minimization of impact should mitigation for lost wetlands be considered.

18. The goals of the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993) include ensuring "no overall loss" and achieving a "...long-term net gain in the quantity, quality, and permanence of wetland acreage and values...." Senate Concurrent Resolution No. 28 states that "[i]t is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and the multiple resources which depend upon them for benefit of the people of the State." Section 13142.5 of the CWC requires that the "[h]ighest priority shall be given to improving or eliminating discharges that adversely affect...wetlands, estuaries, and other biologically sensitive areas."
19. With the successful implementation of the mitigation measures described in these Findings and the Provisions, the Water Board finds that the Project will comply with the California Wetlands Conservation Policy and Basin Plan Wetland Fill Policy referenced in Findings 17 and 18.
20. This Order applies to the temporary and permanent fill and indirect impacts to waters of the State associated with the Project, which is comprised of the components listed in Findings 1 and 2 of this Order.
21. The Discharger has submitted an Alternatives Analysis to show that appropriate effort was made to avoid and then to minimize wetland disturbance, as required by the Basin Plan. The Water Board concurs with the conclusions of the Alternatives Analysis.
22. Discharges of stormwater associated with construction activity will occur. The Discharger is responsible for obtaining appropriate permits for these discharges, including complying with the rules and regulations of National Pollutant Discharge Elimination System (NPDES) permit requirements. This includes complying with the requirements of State Water Resources Control Board Water Quality Order No. 99-08-DWQ, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity and any amendments thereafter (hereinafter General Permit).
23. Because of the size of the Project, and potential to discharge materials that could significantly impact waters of the State, this Order requires the Discharger to submit a Storm Water Pollution Prevention Plan (SWPPP) for the Project, prepared pursuant to the provisions of the General Permit, at least 60 days prior to the beginning of construction for the Project.
24. Discharges of ground water or other non-storm water during construction may be necessary as part of the Project implementation. The Discharger is responsible for ensuring that any ground water collected and discharged is done in a manner that is fully protective of downstream beneficial uses. This Order considers such discharges covered by the General Permit, contingent on submittal of an acceptable discharge plan at least 30 days prior to such a discharge.

25. Discharges of storm water associated with the post-construction operation and maintenance of the Project will occur following its completion. The Discharger is responsible for obtaining appropriate permits for these discharges, including complying with the rules and regulations of NPDES permit requirements. This includes complying with the requirements placed on the Project under NPDES Permit CAS0029912 (Order No. R2-2003-0022), the NPDES Municipal Storm Water Permit that covers the City of Pittsburg and Contra Costa County. The Discharger has submitted a SWMP for its project that, together with the additional submittals required under this Order, will be consistent with the requirements of NPDES Permit CAS0029912, Provision C.3, the permit provisions addressing new and redevelopment projects.
26. The California Environmental Quality Act (CEQA) requires all projects approved by State agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document (e.g., Environmental Impact Report or Negative Declaration) for such projects. On October 11, 2005, the City of Pittsburg adopted a Mitigated Negative Declaration indicating that the Project would not have a significant impact on the environment. The Water Board, as a responsible agency, has reviewed the Mitigated Negative Declaration, and finds that all environmental impacts have been identified for the project activities it is required to approve, and that with compliance with the conditions of this Order, that mitigation measures have been incorporated to reduce those impacts to a level of insignificance.
27. The permitted discharge is consistent with the provisions of State Water Resources Control Board Resolution No. 68-16, Statement of Policy with Respect to Maintaining High Quality of Waters in California. This Order provides for a discharge of fill that will eliminate waters of the State and their associated beneficial uses, but requires re-creation of those uses offsite to prevent a temporal decrease in beneficial uses in compliance with the California Wetlands Conservation Policy and Basin Plan Wetland Fill Policy. The Order is consistent with the maximum benefit to people of the State because the discharge minimizes impacts on existing wetlands to the greatest extent feasible, and will result in the creation of replacement wetlands at a ratio of 3:1. An Alternatives Analysis, submitted as required by the Basin Plan, demonstrates that offsite wetland restoration (rather than avoidance or onsite restoration) constitutes best practicable treatment or control of the discharge.
28. The Water Board has notified the City of Pittsburg, Contra Costa County and other interested agencies and persons of its intent to prescribe WDRs for this discharge.
29. The Water Board, in a public meeting, heard and considered all comments pertaining to the discharge.
30. Project files are maintained at the Water Board under file number 2118.03, 2119.1250 and Site Number 02-07-C0748.

IT IS HEREBY ORDERED that the Discharger, in order to meet the provisions contained in Division 7 of the California Water Code (CWC) and regulations adopted thereunder, shall comply with the following, pursuant to authority under CWC Sections 13263 and 13267:

A. Discharge Prohibitions

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, concrete, asphalt, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.
2. The discharge of floating oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
3. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. The wetland fill activities subject to these requirements shall not cause a nuisance as defined in CWC Section 13050(m).
5. The discharge of decant water from active dredging or fill sites and dredged material/wet sediment stockpile or storage areas to surface waters or surface water drainage courses is prohibited, except as conditionally allowed following the submittal of a discharge plan or plans as described in the Provisions.
6. The groundwater in the vicinity of the Project shall not be degraded as a result of the Project activities or placement of fill for the Project.
7. The discharge of materials other than stormwater, which are not otherwise regulated by a separate NPDES permit or allowed by this Order, to waters of the State is prohibited.
8. The discharge of drilling muds to waters of the State, or where such muds could be discharged to waters of the State, is prohibited.

B. Receiving Water Limitations

1. The discharges shall not cause the following conditions to exist in waters of the State at any place:
 - a. Floating, suspended, or deposited macroscopic particulate matter or foam in concentrations that cause nuisance or adversely affect beneficial uses;

- b. Bottom deposits or aquatic growths to the extent that such deposits or growths cause nuisance or adversely affect beneficial uses;
 - c. Alteration of temperature, turbidity, or apparent color beyond present natural background levels;
 - d. Visible, floating, suspended, or deposited oil or other products of petroleum origin; and
 - e. Toxic or other deleterious substances to be present in concentrations or quantities which will cause deleterious effects on wildlife, waterfowl, or other aquatic biota, or which render any of these unfit for human consumption, either at levels created in the receiving waters or as a result of biological concentration.
2. The discharges shall not cause nuisance, or adversely affect the beneficial uses of the receiving water.
3. The discharges shall not cause the following limits to be exceeded in waters of the State at any one place within one foot of the water surface:
 - a. Dissolved Oxygen: 5.0 mg/L, minimum

The median dissolved oxygen concentration for any three consecutive months shall not be less than 80% of the dissolved oxygen content at saturation. When natural factors cause concentrations less than that specified above, then the discharges shall not cause further reduction in ambient dissolved oxygen concentrations.
 - b. pH: The pH shall not be depressed below 6.5 nor raised above 8.5, nor caused to vary from normal ambient pH by more than 0.5 pH units.
 - c. Nutrients: Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.

C. Provisions

1. The Discharger shall comply with all Prohibitions, Receiving Water Limitations, and Provisions of this Order immediately upon adoption of this Order or as provided below.
2. The Discharger shall submit copies of all necessary approvals and/or permits for the Project and mitigation projects from applicable government agencies for each Project component applicable to that component, prior to the start of construction on that component.

Mitigation & Monitoring

3. Not later than 60 days prior to the beginning of grading within the wetland areas on the Project site, the Discharger shall submit a Final WMP that is acceptable to the Executive Officer, and that modifies the draft WMP in accordance with revisions specified in a Water Board letter dated June 29, 2006, and revisions specified in the May 12, 2006, and June 14, 2006 submittals noted in Finding 6. This Final WMP shall be consistent with the requirements of this Order, including dates and deadlines, and shall provide for mitigation monitoring and maintenance until the Water Board concurs that the mitigation has been successfully completed. The Final WMP shall not be deemed acceptable until the Discharger has received written notification of such acceptance from the Executive Officer. Similarly, the Discharger is responsible for monitoring and maintenance of Project mitigation until it has received a letter from the Executive Officer accepting the mitigation as complete. The Final WMP shall include, at a minimum, the following:
 - a. Off-site creation of 2.4 acres of seasonal wetlands;
 - b. A schedule for implementation of the mitigation plan, including construction of the fencing in accordance with a plan to be included in the Final WMP. Fencing shall be installed concurrently with construction of the mitigation wetlands;
 - c. Monitoring of the wetlands shall include an annual evaluation of sediment build-up within the depressions;
 - d. Measures for removal of non-native species classified as highly invasive;
 - e. A specification that there will be no irrigation of the mitigation wetlands and adjacent uplands at any time in order to ensure that the wetland characteristics develop under natural hydrological conditions;
 - f. A Grazing Management Plan shall be included as part of the Long-Term Management Plan, for implementation by the conservation easement holder, or other management entity under agreement with the easement holder; and,
 - g. A section describing in detail what will be included in the annual mitigation monitoring reports. The Annual Reports shall evaluate mitigation success against all performance criteria specified in Provision 4 of this Order and in the Final WMP, and shall be submitted by September 15 of each year;
4. Mitigation Wetland Performance Criteria and Monitoring

The performance criteria, provided in Table 1, will be used to determine completion of the mitigation responsibilities. Fulfillment of these criteria will indicate that the mitigation areas are progressing well toward the habitat characteristics, functions, and values that constitute the long-term goal of the mitigation program.

Table 1
Existing Conditions and 5-Year Performance Criteria

Element	Existing Conditions (Development Site)	Year 5 Performance Criteria (Mitigation Site)
Wetland		
Inundation (winter/spring)	+0" to +10" for 1 to 5 months	+2" to +18" for forty five days, with a minimum of 14 consecutive days of ponding
Relative Cover by Hydrophytes	80%	≥80%
Number of Native Species	0 spp.	≥4 spp.
Vegetation Cover	86%	≥86%
Relative Cover of Natives	0%	≥70%
Cover of Invasive Exotics	>5%	< 1%
Extent	0.80 acres	2.4 acres
Grassland		
Number of Native Species	0 spp.	≥2 spp.
Vegetation Cover	80%	≥80%
Relative Cover of Natives	0%	≥20%
Cover of Invasive Exotics	20%	< 3%
General Mitigation Project Site	---	No major maintenance in years 4-5

5. The Final WMP, including the mitigation wetland performance criteria, may be amended subject to the review and approval of the Executive Officer. Impacts to the Project site wetlands shall not occur until the Final WMP has been accepted in writing by the Executive Officer.
6. The wetlands in the vicinity of the mitigation wetlands shall not be disturbed or impacted as a result of the implementation of the mitigation plan.
7. Prior to commencement of grading on the Project site, the Discharger shall submit a schedule of Project implementation that includes the dates of impact, and wetland creation at the off-site location. The Discharger shall notify the Water Board immediately upon deviation from the submitted schedule of implementation. Construction, not including monitoring and establishment, of all seasonal wetland mitigation shall be completed either prior to the time when impacts on the Project site

- wetlands occur, or within three months of that time. If the Discharger fails to implement the mitigation plan during the required time period, the Discharger shall notify the Executive Officer within 30 days and submit a revised plan for Executive Officer approval for additional mitigation to offset temporal losses.
8. The Discharger shall notify the Executive Officer of the completed mitigation construction not later than nine weeks after the final planting has been completed in the wetlands. This notification shall include mitigation site photographs and as-built drawings for the wetland areas.
 9. The Discharger shall submit annual mitigation monitoring reports (Annual Reports), acceptable to the Executive Officer, no later than September 15 of each year until the mitigation site has met all performance criteria, and the Executive Officer has accepted, in writing, a notice of mitigation completion for the site. This mitigation monitoring period shall extend for a period not less than five years. If the mitigation and monitoring program indicates that establishment of the habitat is not progressing in a manner or rate consistent with the performance criteria proposed and approved by the Executive Officer, the Annual Reports shall evaluate the probable cause(s) of any problems and propose appropriate corrective measures. Photographs from the photo-documentation points and evaluation of progress toward attaining the performance criteria for the wetland mitigation area and the riparian plantings shall be included in each Annual Report, along with a map showing the photo-documentation points. The performance criteria in the Final WMP shall be included in each Annual Report.
 10. Corrective measures, or any other modifications to the vegetation and/or hydrology of the mitigation wetlands shall not be made after the first three years, with the exception of maintenance for invasive plant removal. If modifications are made in subsequent years due to poor performance, then the mitigation monitoring period shall be extended accordingly, to ensure successful establishment of the mitigation wetlands.
 11. Irrigation water, or water by any other artificial means, shall not be applied to the mitigation wetlands at any time.
 12. If the Executive Officer determines, based on data provided in the mitigation monitoring reports, that extension of the monitoring period is needed to ensure successful creation of seasonal wetlands, then the Discharger shall comply with requirements for additional monitoring.
 13. Not later than 60 days prior to the beginning of Project construction, the Discharger shall submit, acceptable to the Executive Officer, an estimate for the cost associated with implementation of the Final WMP for the Project, and a draft performance bond or letter of credit for establishment of financial assurance. Upon approval by the Executive Officer, the performance bond, or letter of credit shall be established in the amount of the accepted cost estimate. The performance bond or letter of credit must provide that if the Discharger fails to complete all or any portion of the work required by this Order, including requirements to find and implement an alternative mitigation plan if the off-site

wetlands fail to achieve success, an entity determined to be acceptable to the Executive Officer shall be able to draw upon the performance bond or letter of credit for the sums necessary to complete such work. The performance bond or other means of financial assurance shall be held until the Executive Officer has concurred that mitigation success has been achieved.

14. Not later than 60 days prior to Project construction, the Discharger shall submit a draft conservation easement for the land on which the mitigation wetlands are located that identifies, among other things, the entity that will hold the easement. Upon the Executive Officer's acceptance of the draft easement, the Executive Officer may determine that work may begin sooner than 60 days after submittal of the easements. The easement shall cover the 4.8-acre area designated for preservation in the WMP. This area includes 2.4 acres of seasonal wetlands, 1.4 acres of native grassland buffer, and about 1 acre of existing wetlands and uplands that will be preserved. The draft easement shall be developed using the California Department of Fish & Game's model Conservation Easement as a template, and the Discharger shall demonstrate that the document is acceptable to the entity that will hold the conservation easement. The accepted conservation easements shall be recorded not later than December 31, 2008, or within two years of the date of mitigation construction completion, whichever is earlier. The Long-Term Endowment for implementation of the Long-Term Management Plan, described in Finding 10, shall be created before the end of the mitigation monitoring period.

Contingency Measures

15. To fully mitigate for proposed Project impacts, the Discharger shall ensure the successful creation of 2.4 acres of seasonal wetlands. If the Discharger cannot demonstrate, on or before September 15, 2010 (or within four years of Project construction) that the off-site mitigation wetlands are succeeding, and that inadequate water supply and/or on-site soils are the source of the problem, then additional mitigation shall be proposed. If alternative mitigation is necessary due to failure of the mitigation plan authorized by this Order, then the mitigation ratio required will depend on the proximity of the proposed alternative mitigation to the Project impacts, and temporal losses. The proposed mitigation may consist of a combination of seasonal wetland creation and restoration and enhancement of seasonal wetlands or streams in the northern Contra Costa County watershed area, or, solely creation of seasonal wetlands.

Notice of Mitigation Completion

16. When the Discharger has determined that the mitigation wetlands have achieved the performance criteria specified in Provision 4 of this Order and in the Final WMP, it shall submit a notice of mitigation completion (notice), acceptable to the Executive Officer. This notice shall include a status report on the implementation of the long-term management plan, in addition to specific data used to determine that the mitigation wetlands have been successful. After acceptance of the notice in writing by the Executive Officer, the Discharger's submittal of Annual Reports is no longer required.

Stormwater Management

17. Not later than 90 days following adoption of the Order, the Discharger shall submit, acceptable to the Executive Officer, a Final SWMP that includes all appropriate plans, calculations, narrative description of the proposal, design details, and related information. This plan shall provide for treatment of 85% of the average annual runoff from the development site in the water quality basin. The Discharger shall fully implement the SWMP for the Project. In addition to the information provided in the draft SWMP, the Final SWMP shall include detailed design plans for the basin, including the riser details.
18. Not later than 60 days prior to the beginning of construction of any Project component, the Discharger shall submit a SWPPP, prepared pursuant to the General Permit, to address the Project's expected construction stage impacts. The SWPPP shall specifically state which best management practices will be used to provide adequate control of sediment and other construction related materials.


Other Provisions

19. Any substantive modifications to the Final WMP or other documents referenced in the Provisions must be approved in writing by the Executive Officer, prior to implementation of the modification.
20. All Reports pursuant to these Provisions shall be prepared under the supervision of suitable professionals registered in the State of California, if such registration is required or offered in the profession of the subject field.
21. Should discharges of otherwise uncontaminated ground water contaminated with suspended sediment or other non-storm water that has accumulated in utility trenches or other portions of the Project be required, where such discharges are not otherwise covered by an applicable NPDES permit, such discharges may be considered covered by the General Permit, following the Discharger's submittal of a discharge/treatment plan, acceptable to the Executive Officer, at least 30 days prior to such a discharge.
22. The Discharger shall immediately notify the Board staff by telephone whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. Pursuant to CWC Section 13267(b), a written notification of the adverse condition shall be submitted to the Water Board within two weeks of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to any modifications by the Water Board staff, for the remedial actions.
23. The Discharger shall at all times fully comply with the engineering plans, specifications, and technical reports submitted with its completed report of waste discharge.

24. The Discharger is required to use the standard Wetland Tracker form to provide Project information describing impacts and mitigation measures within 14 days from the date of adoption of this Order. An electronic copy of this form can be downloaded at: <http://www.waterboards.ca.gov/sanfranciscobay/certs.htm>. The completed form shall be submitted electronically to wetlandtracker@waterboards.ca.gov or a hard copy shall be mailed to the Water Board at 1515 Clay Street, Suite 1400, Oakland, CA 94612, to the attention of Wetland Tracker.
25. The Discharger is considered to have full responsibility for correcting any and all problems that arise in the event of a failure that results in an unauthorized release of waste or wastewater.
26. Any hazardous, designated or non-hazardous waste as defined in Title 23, Division 3, Chapter 15 of the California Administrative Code, shall be disposed of in accordance with applicable state and federal regulations.
27. The Discharger shall clean up and abate any wastes that are discharged at any sites in violation of this Order.
28. In accordance with CWC Section 13260, the Discharger shall file with the Water Board a report of any material change or proposed change in the ownership, character, location, or quantity of this waste discharge. Any proposed material change in operation shall be reported to the Executive Officer at least 30 days in advance of the proposed implementation of any change. This shall include, but not be limited to, all significant new soil disturbances, all proposed expansion of development, or any change in drainage characteristics at the Project site. For the purpose of this Order, this includes any proposed change in the boundaries of the area of wetland/waters of the State to be filled.
29. An annual fee for Waste Discharge Requirements pursuant to Section 13260 of the California Water Code is required and shall be paid by the Discharger in a timely manner.
30. The Discharger shall maintain a copy of this Order at the Project site so as to be available at all times to site operating personnel and agencies.
31. The Discharger shall permit the Water Board or its authorized representative at all times, upon presentation of credentials:
 - a. Entry onto Project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
 - b. Access to copy any records required to be kept under the terms and conditions of this Order.

- c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order.
 - d. Sampling of any discharge or surface water covered by this Order.
32. This Order does not authorize commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, state, or local laws, regulations or rules of other programs and agencies, nor does this Order authorize the discharge of wastes without appropriate permits from other agencies or organizations.
33. The Water Board will consider rescission of this Order upon Project completion and the Executive Officer's acceptance of notices of completion of mitigation for all mitigation, creation, and enhancement projects required or otherwise permitted now or subsequently under this Order.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on September 13, 2006.



Bruce H. Wolfe
Executive Officer